
1998 Wis Eth Bd 13
POST EMPLOYMENT

The Ethics Board advises that:

(1) Consistent with statutes administered by the Ethics Board, a public official may negotiate terms and conditions of employment with a new employer, even a lobbying principal, after the effective date of the official's resignation from the official's state agency even though the official is scheduled to continue to receive salary for accumulated vacation and sabbatical leave until a later date.

(2) The revolving door provisions of §19.45(8)(a) prohibit a state public official's representing a private organization for compensation before either the agency or board with which the official was associated as a state public official prior to one year after the official's resignation.

Facts

¶1. This opinion is based upon these understandings:

- a. You are a former appointed state public official.
- b. By virtue of your position, you also served as a member of a state board.
- c. You resigned your position as of a specified date.
- d. You will continue to receive accumulated vacation and sabbatical leave pay through a later date.

Question

¶2. The Ethics Board understands your questions to be:

1. Consistent with statutes administered by the Ethics Board, may you negotiate the terms and conditions of employment with a new employer, even a lobbying principal, after the effective date of your resignation but prior to the day after your agency will remove you from its payroll?

2. For purposes of the Ethics Code's "revolving door" provisions, on what date do you cease to be a state public official associated with your agency?
3. For purposes of the Ethics Code's "revolving door" provisions, is the state board on which you also serve a department with which you were associated as a state public official, and if so, on what date did you cease to be a state public official associated with the board?

Discussion

Seeking private employment after relinquishing government responsibilities but while still on state's payroll

¶3. As an official appointed by the Governor, you were a state public official. "State public official" refers to an individual *holding* a state public office.¹ A person who does not possess an office or perform its duties does not hold it.² You ceased to be a state public official on the date that you relinquished all responsibilities, duties, and powers of your position. In the absence of other information, we take that date to have been the close of business on the date on which you left the agency.³ That you may be entitled under the state compensation system to continue to receive a salary for unused vacation or sabbatical leave does not affect the date of your resignation.⁴ Accordingly, provisions of the Ethics Code and lobbying law that restrain state government officials from entering private economic ventures while holding public office ceased to apply after your resignation date.

¹ Section 19.42(13)(a), *Wisconsin Statutes*, provides:

19.42(13) "State public office" means:

(a) All positions to which individuals are regularly appointed by the governor....

² Minutes, meeting of the Ethics Board, open session, June 3, 1981.

³ We also note that pursuant to §17.03, *Wisconsin Statutes*, a public office becomes vacant when the incumbent resigns.

⁴ Because by law you are also a member of a state board, your resignation effectively and simultaneously resulted in your termination of your position as a state public official associated with the board.

Constraint on communication with former agency after leaving state government

¶4. Section 19.45(8)(a), *Wisconsin Statutes*, reduced to its elements, provides:

No former state public official
For 12 months following the date on which he or she ceases to be a
state public official
May, for compensation, appear before or negotiate with
The department with which he or she was associated as a state
public official⁵

¶5. As discussed above, you were a state public official. The date on which you ceased being a state public official, for purposes of applying §19.45(8)(a), is the same date as for other provisions of the Ethics Code.

¶6. The restrictions of §19.45(8)(a) also apply to your relationship with the state board with which you were associated. The board is a department within the meaning of section 19.45(8).⁶ You were a member of the board. Members of the board are state public officials.⁷ Your resignation from your state agency effectively and simultaneously resulted in your termination of

⁵ Section 19.45(8), *Wisconsin Statutes*, provides:

19.45(8)(a) Except in the case where the state public office formerly held was that of a legislator, legislative employee under s. 20.923(6)(bp), (f), (g) or (h), chief clerk of a house of the legislature, sergeant at arms of a house of the legislature or a permanent employee occupying the position of auditor for the legislative audit bureau:

(a) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of the department with which he or she was associated as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

⁶ Section 19.42(5), *Wisconsin Statutes*, provides:

19.42(5) “Department” means the legislature, the university of Wisconsin system, any authority or public corporation created and regulated by an act of the legislature and any office, department, independent agency or legislative service agency created under ch. 13, 14, or 15, any technical college district or any constitutional office other than a judicial office. In the case of a district attorney, “department” means the department of administration unless the context otherwise requires.

⁷A state public official may simultaneously be associated with more than one department.

your position as a state public official associated with the board on the same date.

Other constraints

¶7. In addition to the restriction of §19.45(8)(a), about which you have asked, you should also note that §19.45(8) imposes two further restrictions on a former official. Section 19.45(8)(b), *Wisconsin Statutes*, restricts you, for 12 months, from appearing before, or negotiating with, an officer or employee of any state agency in connection with certain quasi-judicial matters, which were under your responsibility.⁸ And §19.45(8)(c) restricts you from acting on behalf of any person on quasi-judicial matters in which you participated personally and substantially as a public official.⁹

Advice

¶8. The Ethics Board advises that:

(1) Consistent with statutes administered by the Ethics Board, you may negotiate terms and conditions of employment with a new employer, even a lobbying principal, after the effective date of your resignation from your state agency even though you are scheduled to continue to receive salary for accumulated vacation and sabbatical leave until a later date.

(2) The revolving door provisions of §19.45(8)(a) prohibit your representing a private organization for compensation before either the agency or board with

⁸ Section 19.45(8)(b), *Wisconsin Statutes*, provides:

19.45(8)(b) No former state public official, for 12 months following the date on which he or she ceases to be a state public official, may, for compensation, on behalf of any person other than a governmental entity, make any formal or informal appearance before, or negotiate with, any officer or employee of a department in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding which was under the former official's responsibility as a state public official within 12 months prior to the date on which he or she ceased to be a state public official.

⁹ Section 19.45(8)(c), *Wisconsin Statutes*, provides:

19.45(8)(c) No former state public official may, for compensation, act on behalf of any party other than the state in connection with any judicial or quasi-judicial proceeding, application, contract, claim, or charge which might give rise to a judicial or quasi-judicial proceeding in which the former official participated personally and substantially as a state public official.

which you were associated as a state public official prior to one year after your resignation.

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